

**CHAMBER OF COMMERCE  
OF THE  
UNITED STATES OF AMERICA**

**WILLIAM L. KOVACS**  
SENIOR VICE PRESIDENT  
ENVIRONMENT, TECHNOLOGY &  
REGULATORY AFFAIRS

1615 H STREET, NW  
WASHINGTON, DC 20062  
(202) 463-5457

June 2, 2017

National Freedom of Information Officer  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Dear Sir or Madam:

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 and implementing regulations in Part 2 of Title 40 of the Code of Federal Regulations, the Chamber of Commerce of the United States ("Chamber") requests that the Environmental Protection Agency ("EPA") provide public access to the following records:

1. Copies of all citizen suit complaints filed under the Clean Water Act, 33 U.S.C. § 1365(a), and served on the EPA Administrator ("Administrator") or regional offices pursuant to 33 U.S.C. § 1365(c)(3) from January 1, 2014, to December 31, 2016;
2. Copies of all citizen suit complaints filed under the Clean Air Act, 42 U.S.C. § 7604(a), and served on the Administrator or regional offices pursuant to 42 U.S.C. § 7604(c)(3) from January 1, 2014, to December 31, 2016;
3. Copies of all complaints filed against EPA under the Administrative Procedure Act, 5 U.S.C. § 701 *et seq.* ("Judicial Review") arising from the Clean Air Act (42 U.S.C. § 7401 *et seq.*) and the Clean Water Act (33 U.S.C. § 1251 *et seq.*) from January 1, 2005, to December 31, 2016; and
4. Copies of all citizen suit notices of intent to sue ("NOI") filed under the Clean Water Act, 33 U.S.C. § 1365(a), and served on the Administrator or regional offices pursuant to 33 U.S.C. § 1365(b) from January 1, 2014, to December 31, 2016;
5. Copies of all citizen suit NOIs filed under the Clean Air Act, 42 U.S.C. § 7604(a), and served on the Administrator or regional offices pursuant to 42 U.S.C. § 7604(b) from January 1, 2014, to December 31, 2016;
6. Copies of all settlement agreements arising from lawsuits filed against EPA under the Clean Water Act (33 U.S.C. § 1251 *et seq.*), the Clean Air Act (42 U.S.C. § 7401 *et seq.*), and the Administrative Procedure Act (5 U.S.C. § 500 *et seq.*) from January 1, 2005 to December 31, 2016.

If EPA maintains a database of such lawsuits, notices, or settlements for any or all of the above requests, which includes the names of the filing parties and alleged violators, the location of the alleged violations, and filing dates, production to the Chamber of such a database may substitute for the request of copies of such complaints.

Please organize and identify the records by the respective law under which the complaints, NOIs, and settlements were made. Please indicate whether the complaint, NOI, or settlement resulted from an allegation against the Administrator for failure to perform a non-discretionary duty or was filed for other violations of the Clean Air and Clean Water Acts.

Please search for responsive records regardless of format, medium, or physical characteristics. Please produce records electronically in PDF or TIF format on a CD-ROM. Please produce database entries in Microsoft Excel format.

If you believe that any portion of the requested records is exempt from disclosure, the Chamber requests that you provide it with an index of those documents, as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1972). A *Vaughn* index should describe each document claimed as exempt with sufficient specificity under a precisely identified statutory exemption so as “to permit a reasoned judgment as to whether the material is actually exempt under FOIA.” *Founding Church of Scientology v. Bell*, 603 F.2d 945, 959 (D.C. Cir. 1979). Moreover, the *Vaughn* index must “describe each document or portion thereof withheld, and for each withholding it must discuss the consequences of supplying the sought-after information.” *King v. Department of Justice*, 830 F.2d 210, 223-24 (D.C. Cir. 1987). *See also Kimberlin v. Department of Justice*, 139 F.3d 944, 949-50 (D.C. Cir. 1998).

If you believe that some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable, non-exempt portions of the requested records. *See* 5 U.S.C. § 552(b). If it is your position that a document contains non-exempt portions of records and that those non-exempt portions are so dispersed throughout the documents as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed through the document. *Mead Data Central v. Department of the Air Force*, 455 F.3d 242, 262 (D.C. Cir. 1977). Claims of non-segregability should be made with the same detail as required for claims of exemptions in a *Vaughn* index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

If you take the position that certain records or portions thereof are not required to be disclosed, we ask that you nonetheless consider disclosing the records on a discretionary basis. Doing so would be consistent with Attorney General Holder’s March 19, 2009 FOIA guidance to federal agencies, since that guidance counsels use of a presumption of openness. Moreover, President Obama’s January 21, 2009, memoranda commit the Administration to an unparalleled level of transparency and accountability. *See* Memorandum on Transparency and Open Government, 74 Fed. Reg. 4,685 (Jan. 26, 2009).

I would be glad to discuss any aspect of this request with you to expedite your response. In addition, please contact me at once if any further steps are required to clarify any aspect of this request for records to expedite the response.

William L. Kovacs

June 2, 2017

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Pursuant to the Freedom of Information Act, the Chamber agrees to pay or pre-pay reasonable charges incurred to search for and copy these documents, upon presentation of an invoice with the finished copies. If any such search and copying fees exceed \$1,000, please telephone me in advance at (202) 463-5457 or my Assistant Policy Counsel, Jordan Crenshaw, at (202) 463-5632 for agreement to such charges.

I look forward to hearing from you.

Sincerely,

A handwritten signature in black ink, appearing to read "William L. Kovacs", written in a cursive style.

William L. Kovacs